

EXHIBIT 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC., MARVEL)
CHARACTERS, INC., and MVL RIGHTS,))
LLC,)

Plaintiffs,)

vs.)

LISA A. KIRBY, BARBARA J. KIRBY,)
NEAL L. KIRBY and SUSAN N. KIRBY,)

Defendants.)

CASE NO.

10 CV 141 (CM)(KNF)

Pages 1 - 192

VOLUME I

VIDEOTAPED DEPOSITION OF MARK EVANIER
LOS ANGELES, CALIFORNIA
TUESDAY, NOVEMBER 9, 2010

REPORTED BY:

LESLIE L. WHITE

CSR NO. 4148

JOB NO.: 34167

1 BY MR. QUINN:

2 Q I will put it this way: Any of the plaintiffs
3 or related Marvel companies, do you have any personal
4 knowledge --

5 A Any personal knowledge? No, I do not.

6 Q Now just go through some data points.

7 What was -- what is your date of birth?

8 A March 2nd, 1952.

9 Q So that would make you about 58 years old?

10 A I would think so, yes.

11 Q And am I correct that between the years 1958
12 and 1963 you were between six and 11 years old?

13 A That would follow, yes.

14 Q Yes, and you lived in California?

15 A Yes.

16 Q And I assume that between that period of time
17 you had no involvement with anyone at Marvel?

18 A Between '53 and '62 --

19 Q '58 and '63.

20 A '58 and '63? No involvement with anyone at
21 Marvel.

22 Q You understand that in connection with this
23 lawsuit those years are the years that are most relevant
24 to the works that are at dispute --

25 A I understand that --

1 And that would have been about a week after I
2 got out of high school. So it would have been June of
3 1969.

4 Q Okay. And that really was when you began as a
5 freelance writer?

6 A Correct.

7 Q Did there come a time that you met Jack Kirby?

8 A Yes.

9 Q And how did that come about?

10 A You want the long version or the short
11 version?

12 Q Whatever the most complete version you can
13 give me without boring us to death.

14 A Well, you better leave now.

15 In -- at that time -- the time being July of
16 '69 -- I was the president of a local comic book club
17 called the Los Angeles Comic Book Club. Jack and his
18 wife Rosalyn attended a science fiction convention on
19 the July 4th weekend of that year that was held at the
20 Miramar Hotel in Santa Monica.

21 And at that convention they met some of the
22 officers of our club. I was not present for the
23 convention, but they met some officers of the club, and
24 they invited them, they said, "Why don't you bring your
25 Board of Directors down to our house for a visit."

1 So the following Tuesday I think it was, three
2 of the other officers of the club and I drove down to
3 Irvine, California where the Kirbys were living. None
4 of us could drive at that time, so one of the officer's
5 mothers drove us down, and that was the day I met Jack
6 and Roz.

7 Q And how old were you?

8 A This was June of '69, so I was 17 years old.

9 Q And --

10 A Excuse me, this was July of '69.

11 Q Okay. Fair enough.

12 And did you subsequently go to work for
13 Mr. Kirby as an assistant or an apprentice?

14 A Yes.

15 Q And how did that come about?

16 A Well, after -- the day after I met Jack I met
17 the people at a company, local firm called Marvelmania
18 International, which was a licensee of Marvel that was
19 producing fan club material. They were selling posters
20 and little plastic pillows and decals. And I got hired
21 by them to be their in-house Marvel expert and to edit
22 the club fan magazine.

23 And I met Jack -- I had a lot of dealings with
24 Jack for several months, the balance of '69, as he
25 was -- as we were doing merchandise based on his artwork

1 Q Now you mentioned that you saw him a lot
2 during that period, let's say from 1972 until his death
3 in -- I believe it was 1994, was it?

4 A I should know this. '94 I believe, yes.

5 Q During that period of time I take it you
6 remained in close contact with Mr. Kirby?

7 A Yes, I did.

8 Q Is that a fair statement?

9 A That is a fair statement, yes.

10 Q And you would have dinners with the family,
11 among other things?

12 A From time to time, yes.

13 Q And, in fact, Mr. Kirby became a very close
14 friend of yours; isn't that right?

15 A I would like to think so.

16 Q And you stated publicly that he treated you
17 like family; isn't that right?

18 A I may have said that at times, yes. I
19 actually --

20 Q And, indeed, he even introduced as his son
21 Mike from time to time?

22 A He made that slip once, yes.

23 Q And it's fair to say that over that period of
24 time you came to idolize Jack Kirby, didn't you?

25 A I would never -- I would not use the word

1 "idolize." I certainly respected the man greatly.

2 Q You had great affection for him too, didn't
3 you?

4 A Yes, I did.

5 Q Now have you done work for Marvel over the
6 years?

7 A Yes, I have.

8 Q Could you describe that for us.

9 A Let's see, I wrote -- well, this gets
10 complicated because there were a number of -- I did
11 quite a number of projects where I wrote materials that
12 I was paid by another firm but Marvel published them. I
13 was paid by someone else, and then Marvel published the
14 books --

15 Q Uh-huh.

16 A -- but my paycheck came from someone else.

17 Q From somebody else?

18 A Yes.

19 Q Right.

20 A In that category I did -- I was the editor of
21 the -- I was the writer and then subsequently the editor
22 of a line of comics for Hanna Barbera, which Marvel
23 published. I was hired by the Edgar Rice Burroughs
24 Company to write a series of Tarzan comics, and Marvel
25 published one or two of those.

1 Q Okay. I'm going to rephrase.

2 It's correct, is it not, that over the years
3 you have earned a significant amount of money writing
4 about Jack Kirby, haven't you?

5 A No --

6 MR. TOBEROFF: Lacks foundation.

7 BY MR. QUINN:

8 Q You have earned money writing about Jack
9 Kirby; correct?

10 A Yes.

11 Q "Significant" is a relative term; right?

12 A Um, in the sense that "significant" implies a
13 lot of money, that would not be correct.

14 Q You have earned, over the course of a number
15 of years, money writing about Jack Kirby; right?

16 A I have earned -- I have been paid to write
17 about Jack, yes.

18 Q And did you search for documents that would
19 show the amount of compensation you earned in connection
20 with writing about Jack Kirby?

21 A No, I did not.

22 MR. QUINN: We would request that, since it is part
23 of the Subpoena. I direct that to you, Mr. Toberoff.

24 Q Did you search for documents that related or
25 might relate to the dispute that you described with

1 regard to the artwork?

2 A The current dispute over artwork?

3 Q Yes.

4 A I did not have -- no, I did not have any.

5 Q Your testimony is that you did not have any
6 documents relating -- that might relate to the artwork
7 dispute in your files?

8 A My testimony is that I knew I did not have
9 any.

10 Q Okay. We'll come back to that.

11 Fair to say -- you mentioned that you had
12 visited the Marvel offices sometime in the '70s; is that
13 right?

14 A I visited several times during the '70s.

15 Q You hadn't visited between 1958 and 1963;
16 right?

17 A That's correct.

18 Q So you personally have no knowledge about the
19 activities going on in connection with the creation of
20 comic books between the years 1958 and 1963 at Marvel;
21 correct?

22 A I do not agree with that statement.

23 Q Other than what you have been told by somebody
24 else, you personally have no knowledge about what
25 occurred between 1958 and 1963 in the creation of comic

1 books at Marvel in New York City, do you?

2 MR. TOBEROFF: Asked and answered. He already
3 answered that question.

4 BY MR. QUINN:

5 Q Answer it again.

6 A I do not agree with that statement.

7 Q I'm going to ask it one more time.

8 MR. TOBEROFF: No, you can't ask the same question
9 three times.

10 BY MR. QUINN:

11 Q I tell you what, you're right.

12 Tell me why you don't agree with that
13 statement, Mr. Evanier.

14 A Because I believe I know an awful lot about
15 what happened at Marvel Comics during that period of
16 time.

17 Q Perhaps you weren't listening to my question.

18 A All right.

19 Q I'll try it one more time in that context. I
20 am not asking you what you believe you know.

21 I'm asking you whether -- isn't it a fact that
22 since you weren't there you have no personal firsthand
23 knowledge about what happened in the creation of comic
24 books between 1958 and 1963? That's a fact, sir, isn't
25 it?

1 MR. TOBEROFF: Asked and answered.

2 THE WITNESS: Um --

3 MR. TOBEROFF: You can answer one more time.

4 THE WITNESS: I don't agree with that statement --
5 well, you added the word "personal" this time.

6 If your question is did I watch them creating
7 the comics, no, I was not there when they created the
8 comics.

9 BY MR. QUINN:

10 Q That's the question.

11 A All right. You could have asked it that way
12 and saved us a lot of time.

13 Q So you didn't see any story conferences that
14 went on; correct?

15 A I was not present for story conferences that
16 went on. In --

17 (Speaking simultaneously.)

18 BY MR. QUINN:

19 Q And you didn't see any --

20 A Excuse me, let me --

21 Q I'm sorry --

22 A -- let me answer the question.

23 Q -- go ahead, please.

24 A I was not present for story conferences that
25 went on between 1958 and 1963.

1 foundation.

2 THE WITNESS: Um, as I said before, I was not
3 present in the offices between '58 and '63. Does that
4 answer your question?

5 BY MR. QUINN:

6 Q As long as you say yes my question is correct.

7 A I don't understand your question.

8 MR. TOBEROFF: You don't have to agree with his
9 question. Just answer his question, and if you feel
10 like you can't answer the question, don't . . .

11 THE WITNESS: I do not understand the question well
12 enough to answer it, to give you a yes or no answer to
13 it.

14 BY MR. QUINN:

15 Q Since you weren't present as you just
16 testified --

17 A Yes.

18 Q -- you could not have observed the manner in
19 which Stan Lee gave plot outlines, gave scripts, gave
20 direction to the artists, such as Jack Kirby, during
21 that period of time 1958 to '63; true?

22 MR. TOBEROFF: Again, the question is assuming all
23 sorts of facts that haven't been established, and lacks
24 foundation.

25 MR. QUINN: Read it back.

1 (The record was read as follows:

2 "Q Since you weren't present as
3 you just testified --

4 "A Yes.

5 "Q -- you could not have
6 observed the manner in which
7 Stan Lee gave plot outlines, gave
8 scripts, gave direction to the
9 artists, such as Jack Kirby, during
10 that period of time 1958 to '63;
11 true?")

12 MR. TOBEROFF: Same objections.

13 THE WITNESS: Um, I don't understand -- I don't
14 understand the use of the phrase "during that time."

15 If you are asking me did I observe it during
16 that time, no, I did not observe it during that time.

17 BY MR. QUINN:

18 Q That's what I was asking you.

19 A I was not watching them do it -- between 1958
20 and 1963 I was not there watching them do it.

21 Q Right. Okay. And did you ever personally see
22 any paychecks that Mr. Kirby received from work that he
23 performed at Marvel that covered the period 1958 to
24 1963?

25 A No, I did not.